



FILED

3-22-16
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
for Approval of Agreements Resulting from Its
2014-2015 Energy Storage Solicitation and
Related Cost Recovery.

(U 39 E)

Application 15-12-004
(Filed December 1, 2015)

**PACIFIC GAS AND ELECTRIC COMPANY
NOTICE OF EX PARTE COMMUNICATION**

Pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure, Pacific Gas & Electric (PG&E) hereby gives notice of the following ex parte communication. The communication occurred on Monday, March 21, 2016, at 12:00 noon by electronic mail (email) to the offices of the California Public Utilities Commission (CPUC). The email transmittal is attached to this notice. It was forwarded to the service list at approximately 3:00 pm on Monday, March 21, 2016. [(Rule 8.4(a))]

Mark Huffman, Chief Counsel, Electric Markets, PG&E, initiated the communication with CPUC Administrative Law Judge Michelle Cooke. [Rule 8.4(b)]

Chief Counsel Huffman provided ALJ Cooke with information she requested with regard to a PG&E statement made at the March 10, 2016 prehearing conference, as described in ALJ Cooke's March 18, 2016 email, which is also included in the email transmittal attached to this notice. [Rule 8.4(c)]

Respectfully submitted,

/s/ Erik B. Jacobson

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Dated: March 22, 2016

Attachment

From: Huffman, Mark (Law)
Sent: Monday, March 21, 2016 12:00 PM
To: Cooke, Michelle; Lee, Evelyn C (Law)
Cc: Greenacre, Wade
Subject: RE: Citation to Testimony/Application by Noon 3/21/16

ALJ Cooke

This e-mail responds to your request below. In order to meet the noon deadline, PG&E is sending this response directly to you. Later today, PG&E will forward a copy of this e-mail exchange to the service list in A.15-12-004, and will also file it as an ex parte communication. I apologize in advance for any typos or inadvertent errors in the quotations below. I was not able to do a careful proof read in the time frame provided for responding to your request.

A.15-12-004 seeks approval of seven agreements that were signed as a result of PG&E's Energy Storage Request for Offers (2014 ES RFO). The 2014 ES RFO was conducted in compliance with D.14-10-045, which approved, with modifications, PG&E's proposed 2014 ES RFO framework. PG&E submitted its proposed 2014 ES RFO framework in A.14-02-007.

PG&E's testimony in A.14-02-007 states: "Each executed agreement is contingent upon the issuance of all regulatory approvals needed for PG&E to recover its costs under the agreement in rates." (Chapter 1, p. 1-2, lines 23-25.)

PG&E's application in A.14-02-007 states: "Each executed agreement must receive final and non-appealable CPUC Approval before storage service may begin. Commission Approval will consist of a final non-appealable Commission decision without conditions or modifications that are unacceptable to either PG&E or the counterparty, which approves the agreement in its entirety, including all related payments to be made by PG&E and PG&E's proposed cost recovery treatment, subject only to the CPUC's review of PG&E's administration of the Agreement, and finds that procurement under the Agreement counts toward PG&E's Target as proposed by PG&E." (Application, p. 14.)

The contract provisions discussed at PHC RT: 37: 3-5 are set forth in the Pro Forma Energy Storage Agreement (ESA) included in PG&E's 2014 Energy Storage Request For Offer Protocol, which is included as Appendix B of PG&E's application in A.14-02-007.

Section 2.3 of the pro forma ESA states: "If CPUC Approval has not occurred on or before three hundred sixty five (365) days from the date on which Buyer files this Agreement with the CPUC seeking CPUC Approval ("CPUC Approval Condition Precedent"), then either Party may terminate this Agreement effective upon Notice to the other Party, unless such approval has been waived in writing by both Parties. Within ten (10) Business Days of such termination, Buyer shall return the Project Development Security. Following the return of the Project

Development Security, neither Party shall have any obligations or liability to the other by reason of such termination.”

CPUC approval is a defined term in the ESA. It is defined (pro forma ESA, Appendix I, p. I-1) as follows: “‘CPUC Approval’ means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approval of this Agreement in its entirety, including all related payments to be made by Buyer and Buyer’s proposed cost recovery treatment, subject only to CPUC review of the Buyer’s administration of the Agreement; (b) a finding that the procurement under this Agreement counts as proposed by Buyer toward the energy storage target established by CPUC Decision 13-10-040, or any subsequent related decision(s).

CPUC Approval will be deemed to have occurred on the first day it can be legally determined that a final CPUC decision containing such findings has become non-appealable.”

Turning to A.15-12-004, PG&E’s testimony states: “Either party may terminate the ESA if CPUC Approval has not occurred by 365 days from the date on which PG&E filed the ESA with the CPUC. CPUC Approval means the Commission’s issuance of a final order, without conditions or modifications unacceptable to either of the Parties, which approves the agreement in its entirety, including all payments to be made, subject to CPUC review of PG&E’s administration of the agreement, and finds that the procured energy storage counts towards PG&E’s energy storage target.” (Chapter 3, p. 3-4, line 14-21.)

Termination conditions for the two Purchase and Sale agreements (PSAs), are discussed confidentially in the testimony on page 3-11, lines 29-32.

Appendix B of PG&E’s prepared testimony in A.15-12-004 sets for the five ESAs and two PSAs for which PG&E is seeking approval. PG&E is not able, in the time frame provided for responding to your request, able to catalogue the specific terms in each ESA and PSA and compare them to the pro forma terms. PG&E would be glad to do so, if that would be of use.

Respectfully

Mark Huffman
PG&E

415.973.3842

From: Cooke, Michelle [<mailto:michelle.cooke@cpuc.ca.gov>]
Sent: Friday, March 18, 2016 4:09 PM
To: Lee, Evelyn C (Law); Huffman, Mark (Law)
Subject: Citation to Testimony/Application by Noon 3/21/16

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Mr. Huffman/Ms. Lee- at the 3/10/16 PHC Ms Lee indicated that the contracts are written “to limit the parties’ ability to perform under the contract unless the utility receives cost recovery?” (PHC RT: 37: 3-5)

Please provide a citation to the locations in your application or supporting documentation that this contractual language appears by noon on 3/21/16. You may respond to this email and copy all parties if preferred. In any event, your responsive communication should be filed as an ex parte communication.

Thank you

Michelle Cooke

Administrative Law Judge

415-703-3852

mlc@cpuc.ca.gov